IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

FIRST APPEAL (STAMP) NO. 4650 OF 2007

in

L.C. SUIT NO. 3708 OF 1998

Shivcharan Bushman Pater (Valmiki) ..Appellant
(Org..Plaintiff)

Versus

The Municipal Corporation of Gr.Mumble
& Nr. ..Respondents
(Org.defendants)

Ms. Sunlit M. Poddar for the appellant.
Mr. J.J.Xavier for B.M.C.

CORAM: S.K.SHAH,J.
DATE : 11th April, 2007.

P.C.

1. The appellant to get the Appeal registered in the course of one week.

2. Heard the Appeal for admission.

3. The appellant has challenged the order passed after the notice under Section 351 of the B.M.C. Act was issued. Reply was given by the appellant and an order came to be passed. That was challenged in L.C. Suit No. 2233 of 1998. That suit was decided by the City Civil Court, Bombay by order dated 5.5.1998 whereby the Respondent authorities were directed to give hearing to the appellant and then pass necessary order. Accordingly, a hearing was given and the speaking order dated 6th June, 1998 was passed and it is that order which was challenged by the appellant in the suit. The issues that were raised by the parties were whether the plaintiff proves that the notice under Section 351 of the B.M.C. Act and the order passed thereon is illegal and not binding on the plaintiff and that whether the suit structure is as per the plan authorised and tolerable. Both these issues were answered in the negative.

4. It is contended on behalf of the appellant that the appellant is a tenant and the notice should have been given to the landlord and that he has not carried out the construction. However, no such plea was raised in the trial Court. In the 351 notice it is specifically alleged that the construction was recent.

It is undisputed that the appellant-plaintiff is residing in the suit premises since 1976. Therefore, it was for the appellant-plaintiff to prove that the structure was authorised. In that regard, however, no document was produced to prove that the structure was authorised. It is also not proved that the work was carried out and was in existence since prior to 1976 as alleged by the plaintiff.

5. Under the circumstances, the order passed by the trial Court was legal and proper. I do not find any merit in the Appeal. The Appeal is, therefore, dismissed.

6. The learned Counsel for the appellant seeks stay of the operation of this order for some time. The learned Counsel for the Respondents opposes the same. In view of the facts of the case and in view of the fact that no document was produced, I am not inclined to grant stay of this order. The prayer is, therefore, rejected.

(S.K.SHAH,J.)